

Minutes of the February 26, 2010 Regular Council Meeting

Call to Order and Flag Salute at 3:30 pm by Mayor Serio.

Council in Attendance: Weistling, Tingle, Serio, Langan, Carmean, Bunting and Smallwood.

Topics for Discussion and Possible Action - DNREC Lifeguard Contract

Council Member Smallwood advised that both he and Mayor Serio met with representatives of DNREC on February 22, 2010. DNREC has agreed to a contract with The Town for the amount requested in order for the Fenwick Island Beach Patrol to provide lifeguard coverage on the State portion of the beach.

Approval of Minutes:

Motion to Approve the Minutes of January 22, 2010 Meeting - Council Member Carmean

Second: Council Member Smallwood

DISCUSSION:

Mayor Serio requested changes to page 1. Revised text follows:

Further clarification was requested by Mayor Serio on 2/26/2010 as part of Minutes approval. Mayor Serio requested that minutes reflect her confusion about referencing Resolution #38-2009. This resolution, the Annual Fee Schedule adopted by Council, did not change the Bonfire Permit Fee as that fee was set by Ordinance at the time of Resolution #38-2009 passage. In order to revise Bonfire Permit Fees, it was necessary to remove the reference to a stated fee amount from Town Ordinance. Once changed, Resolution #41-2010 was intended to serve as an addendum to the original Fee Schedule set out by Resolution #38-2009. The wording of proposed Resolution #41-2010 did not adequately express this and so the proposed resolution was revised by motion of Council Member Carmean (seconded by Council Member Langan). That resolution was passed by unanimous vote of Council.

Mayor Serio requested change to page 4 "President's Report." Revised text follows:

- Mayor Serio advised that plans for a Public Safety Building are on track.
- Mayor Serio will meet with DEMA and encourage them to meet with the Town in order to stay on top of any changes to Flood Regulations.

Motion to Approve the Minutes of January 22, 2010 Meeting as amended - Council Member Carmean

Second: Council Member Langan

Vote to approve minutes of January 22, 2010 Meeting (7-0)

Minutes Approved

Treasurer's Report:

Council Member Bunting noted that the financial report is included in the council meeting packet. A Budget Committee meeting will be on 3/1/2010 in order to address possible re-allocation of certain budget items and expenditures.

DISCUSSION

None

Motion to Accept the Treasurer's Report - Council Member Carmean

Second - Council Member Langan

Vote to accept the Treasurer's Report (7-0)

Treasurer's Report Approved

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Town Manager Report:

- Town Manager Abbott thanked the Public Works Department for all of its efforts during the snow-related emergencies. Dan Heller (FIPW) thanked the Fenwick Island Police Department for their assistance. Council Member Carmean noted that she recently forwarded a letter to all concerned thanking them for their efforts.
- Mr. Abbott noted that the Town may be eligible for reimbursement of some of the expense related to recent snow clearing efforts. He has sent a statement to Sussex County for \$12,166.42.
- Mr. Abbott thanked the Fenwick Island Police Department for their work during the recent snow storms. FIPD maintained 24-hour coverage.
- Town Hall served as the command post for the recent missing person search.
- The Town sign in the north median was destroyed during one of the snow storms. Mr. Abbott filed a claim with the Town's insurance carrier and has received a check from them for the full replacement amount (no deductible).
- Mr. Abbott attended the Sussex County meeting to conduct a 5-year update to its All Hazards Mitigation Plan.
- Recycling in January 2010 exceeded 3 tons.

Department Reports:

- Beach Patrol –No report
- Building Official – Report is included in the council packet. Pat Schuchman reported that, as of today's date, her department is 24% above its projected revenue for the year.
- Public Works: Report is included in the council packet.
- Fenwick Island Police Department: In addition to the information included in the council packet, Chief Boyden reported that the Public Works Department has begun preparation to install the solar radar signs. Signs will be in the northbound median near Town Hall and the southbound median between Lewes and James Streets. Chief Boyden expects installation to be complete 1-2 weeks and that the department expects to be reimbursed to almost 100% of cost. Chief Boyden also reported that his department is the recipient of two grants one of which will be used to offset overtime costs this summer.

DISCUSSION

Council Member Weistling asked if the radar sign will be permanently affixed. Chief Boyden noted that the signs can be moved to a different location but battery life is limited in this situation.

Committee Reports:

- Beach Committee –No report.
- Environmental Committee –Council Member Carmean reported that the next meeting is March 9, 2010 @10:30 AM. A presentation, "The Health of Our Bays," will be made by Council Member Smallwood.

Planning Commission:

Report included in Council book.

Charter & Ordinance:

- Council Member Weistling introduced a First Reading of Chapter 77 Disorderly Conduct (included at the end of these minutes) and asked Council to delete the existing Chapter 77 Disorderly Conduct and replace it with the proposed document.
Motion to adopt – Council Member Carmean
Council Member Langan seconded.

DISCUSSION

Council Member Weistling advised that this change came about from Chief Boyden's request to update and clarify Code regarding Disorderly Conduct. The Charter and Ordinance Committee reviewed Chief's recommendations which were based on the Town of Bethany Beach Ordinance. The document has been reviewed by the Town Solicitor. The Ordinance is broken down into four articles: Exposure, Disorderly Conduct, Disorderly Dwelling Units and Juvenile Curfew. Chief Boyden added that existing Code is vague and it is difficult to convict based on the current code.

PUBLIC PARTICIPATION

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None

Vote to accept the First Reading of Chapter 77 Disorderly Conduct: All in Favor.
First Reading passed (7-0)

- Council Member Weistling motioned to accept a First Reading of Chapter 107 - Noise (included at the end of these minutes)
Council Member Carmean seconded.

DISCUSSION

Council Member Weistling noted that the proposed change deletes in its entirety the current Chapter 107 – Noise replacing it with new language in this First Reading. This change clarifies verbiage and terms and outlines specific fines for violations.

PUBLIC PARTICIPATION

None

Vote to accept the First Reading of Chapter 107 - Noise: All in Favor.
First Reading passed (7-0)

- Council Member Weistling motioned to accept a Second Reading of Chapter 95 Hazardous Materials (included at the end of these minutes). Proposed Change is to Chapter 95-2.
Council Member Carmean seconded.

DISCUSSION

Council Member Weistling advised that the change to this ordinance is the addition of “and storage” to title of Chapter 95 and to Chapter 95-2. Council Member Carmean noted it is important to include the idea of storage when considering hazardous materials.

PUBLIC PARTICIPATION

None

Vote to accept the Second Reading of Chapter 95 Hazardous Material: Smallwood-yes; Carmean-yes; Bunting yes; Serio-yes; Weistling-yes; Tingle-yes; Langan-yes
Second Reading passed (7-0)

- Council Member Weistling motioned to accept a Second Reading of Chapter 102 Lighting (included at the end of these minutes).
Council Member Tingle seconded.

DISCUSSION

Council Member Weistling advised that this change replaces the existing ordinance. This lighting ordinance combines residential and commercial into one ordinance and removes much of the redundancy of the original. Mayor Serio questioned the reason for underlining of certain terms. Council Member Weistling advised that this is to hi-light that it's a change.

PUBLIC PARTICIPATION

None

Vote to accept the Second Reading of Chapter 102 Lighting: Smallwood-yes; Carmean-yes; Bunting yes; Serio-yes; Weistling-yes; Tingle-yes; Langan-yes
Second Reading passed (7-0)

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Council Member Weistling noted that a recent news article featured a new type of wind turbine. It is a Honeywell product (Windtronics). Technology continues to evolve providing smaller turbines. Mr. Weistling advised of two websites: www.ownyourownwind.com and www.dsireusa.org which give information on changing technology and incentives for switching to renewable energy.

Old Business:

- None

New Business – No Action to be Taken:

- Council Member Weistling asked if the Town could maintain a list of persons/firms who might be available to shovel snow
- Council Member Weistling advised that he received a letter from Sue Clower suggesting the addition of port-a-pots to designated beach ends

Public Participation:

- John Belian (1 W Houston St) – announced that the Fenwick Island Fishing Club did not take part in a march to Washington DC to protest pending legislation. Contact Mr. Belian for more information.
- Mary Pat Kyle (1205 Bunting Ave) – thanked Bill Weistling for shoveling snow from the driveway of many of the residents during the recent snow event. Mrs. Kyle also expressed disappointment and surprise that Council held its Special Meeting on February 11, 2010 regarding beach concessions on a day when residents were told by the Governor to stay home and off the roads. Mayor Serio advised that no decisions were made at the meeting.
- Mike Quinn (5 W Houston St) – noted that the Cannon Street sign is missing at the intersection of Cannon and Bunting Streets. Town Manager Abbott advised that replacement signs are on order.
- Martha Keller (1312 Bora Bora St) – Thanked Council Member Weistling for his work on ordinances.

President's Report:

- Mayor Serio thanked Council Member Todd Smallwood and Win Abbott for attending the DNREC meeting regarding the Lifeguard contract
- There will be a "Big 4" review of the ambulance budget the on March 2, 2010
- Mayor Serio advised that the Public Safety Committee is beginning to have regular meetings regarding the Public Safety Building. They are now seriously considering what direction to take. Mrs. Serio thanked Chief Bill Boyden for assisting the group.
- Council Member Smallwood asked Mayor Serio if the Bethany Beach Volunteer Fire Company is sending out individual solicitations for memberships in the unincorporated area. Mayor Serio advised that they have received subscriptions and that many Homeowner Associations are now including the Ambulance Service in their HOA Dues. Solicitations are sent once a year.
- Town Manager Abbott announced that the redesigned website has been launched www.fenwickisland.delaware.gov He thanked Agnes DiPietrantonio and Chief Boyden for their work on it.
- Mayor Serio made note of upcoming meetings.

Motion to Adjourn: Council Member Carmean

Second: Council Member Langan

All in favor Motion passed (7-0)

Mayor Serio adjourned the meeting at 4:15 PM.

Respectfully submitted,

Agnes DiPietrantonio, Town Clerk
For Diane Tingle, Secretary

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NOTICE

Resolution #41-2010
Addendum to Fee Schedule

On January 22, 2010 The Fenwick Island Town Council
Passed the Following Addendum to Resolution #38-2009
Fee Schedule

O - OTHER FEES

(1) Beach Bonfire Permit - \$25 & \$100

This resolution sets fee structure for Beach Bonfire Permits - Non-refundable Permit Fee (\$25) and Refundable Deposit (\$100). This fee structure is to be included in the Fee Schedule as set out by Resolution #38-2009.

Attest: _____
Agnes D. DiPietrantonio, Town Clerk

Audrey Serio, President of Council

Diane B. Tingle, Council Secretary

I, Diane B. Tingle, Secretary of the Town Council, of the Town of Fenwick Island, Delaware, do hereby certify that the foregoing is a true and correct copy of the Resolution passed with the noted exception by the President and Council at a meeting on January 22, 2010, at which a quorum was present and voting throughout and the same is still in force and effect.

Date

Diane B. Tingle, Council Secretary

AS/adip Addendum to Fee Schedule
PASSED January 22, 2010

Resolution #41-2010

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PROPOSED:

Chapter 77. DISORDERLY CONDUCT

§ 77-1. Definitions; Word Usage.

For the purposes of this Chapter, the following terms, phrases, words and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular and words in the singular number include the plural. The word "shall" is always mandatory and not merely directory.

TOWN - The Town of Fenwick Island, Delaware, with administrative offices at 800 Coastal Highway, Fenwick Island, Delaware 19944.

EMERGENCY - An unforeseen combination of circumstances or the resulting state that calls for immediate action. The term includes, but is not limited to, a fire, natural disaster or automobile accident or any situation requiring immediate action to prevent serious bodily injury or loss of life.

JUVENILE OR MINOR - Any unemancipated person under the age of 18 or, in equivalent phrasing often herein employed, any person 17 or less years of age.

PARENT - Any person having legal custody of a juvenile as a natural or adoptive parent, as a legal guardian, as a person who stands in loco parentis or as a person to whom legal custody has been given by court order.

PERSON - Includes firms, companies, corporations, partnerships, associations or any organization entity as well as individuals.

PUBLIC PLACE - Any place to which the public or a substantial group of the public has access and includes, but is not limited to, the public beach, jetties, wharfs, docks, boardwalk, streets, alleys, sidewalks, parking lots, common areas of churches and condominiums, restaurants, shops, cafes, arcades and similar areas that are open to the use of the public. As a type of "public place," a street is a way or place, of whatever nature, open to the use of the public as a matter of right for purposes of vehicular travel or for pedestrian travel. "Street" includes that legal right-of-way, including but not limited to the cartway of traffic lanes, the curb, the sidewalks, whether paved or unpaved, and any grass plots or other grounds found within the legal right-of-way of a street.

REMAIN - To loiter, idle, wander, stroll, play, stay behind, tarry or stay unnecessarily in a public place, including the congregating of groups (or of interacting minors) totaling four or more persons in which any juvenile involved would not be using the streets for ordinary or serious purposes such as mere passage or going home, or to fail to leave the premises of an establishment when requested to do so by a police officer or the operator of an establishment. To implement this provision with additional precision and precaution, numerous exceptions are expressly defined in this Chapter.

TIME OF NIGHT - As referred to herein is based upon the prevailing standard of time, whether Eastern Standard Time or Eastern Daylight Saving Time, generally observed at that hour by the public in the Town.

YEARS OF AGE - Continues from one birthday, such as the seventeenth to (but not including the day of) the next, such as the eighteenth birthday, making it clear that 17 or less years of age is herein treated as equivalent to phrase "under 18 years of age."

ARTICLE I **Exposure in Public**

§ 77-2. Urinating in public.

No person shall urinate or defecate in any public place or in any place on private property not designed for the disposal of human waste in the Town of Fenwick Island, Delaware.

§ 77-3. Disrobing in public.

No person shall disrobe or change his clothing from bathing suit to street clothes or otherwise in any motor vehicle, in any public place or in any place not enclosed from the view of others in the Town of Fenwick Island, Delaware.

§ 77-4. Engaging in sexual acts in public.

No person shall engage in sexual intercourse or any immoral acts in any motor vehicle in any public place or in any place not enclosed from the view of others in the Town of Fenwick Island, Delaware.

§ 77-5. Violations and penalties.

Any person found guilty of violating any of the provisions of this Article shall, upon conviction thereof, be subject to a fine of \$200. Each day that a person continues to violate the provisions of this Article shall be deemed a separate offense.

ARTICLE II **Disorderly Conduct**

§ 77-6. A person may be found guilty of disorderly conduct when:

- A. The behavior intentionally causes public inconvenience, annoyance or alarm to any other person or creates a risk thereof by:
 - (1) Engaging in fighting or in violent, tumultuous or threatening behavior;
 - (2) Making an unreasonable noise or an offensively coarse utterance, gesture or display or addressing abusive language to any person present;
 - (3) Disturbing any lawful assembly or meeting of persons without lawful authority;
 - (4) Obstructing vehicular or pedestrian traffic;
 - (5) Congregating with other persons in a public place and refusing to comply with a lawful order of the police to disperse;
 - (6) Creating a hazardous or physically offensive condition which serves no legitimate purpose; or
 - (7) Congregating with other persons in a public place while wearing masks, hoods or other garments rendering their faces unrecognizable, for the purpose of and in a manner likely to imminently subject any person to the deprivation of any rights, privileges or immunities secured by the Constitution or laws of the United States of America.

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- B. The behavior results in a course of disorderly conduct, as defined in Subsection A of this section, which is likely to cause substantial harm or serious inconvenience, annoyance or alarm and refuses or knowingly fails to obey an order to disperse made by a police officer to the participants.

§ 77.7. Violations and Penalties

Any person found guilty of violating any of the provisions of this Article shall, upon conviction thereof, be subject to a fine of \$200. Each day that a person continues to violate the provisions of this Article shall be deemed a separate offense.

ARTICLE III **Disorderly Dwelling Units**

§ 77.8. Findings; purpose.

- A. The Town Council has determined that at various times, particularly during the late spring and summer, the occupants or users of some dwelling units in the Town of Fenwick Island use those dwelling units for the purpose of engaging in disorderly and disruptive conduct, loud and disturbing noises, public intoxication and other violent and tumultuous behavior. The Town Council has also determined that a number of persons in legal possession of dwelling units in the Town of Fenwick Island are engaging in the practice of allowing such dwelling units, designed for occupancy by essentially single families, to be occupied or used by groups of persons, frequently but not necessarily comprised of minors with insufficient adult supervision. The Town Council has further determined that these practices encourage incidents of disorderly conduct, loud and disturbing noises, public intoxication, violent and tumultuous behavior, disturbing the peace and other similar acts which are detrimental to the public health, safety, peace and welfare of the Town.
- B. The Town Council has further determined that the persons entitled to lawful possession of such premises who fail to take appropriate measures to prevent recurrences of such incidents after due notice of previous disturbances by persons occupying or using the premises must be held responsible for allowing such conduct to occur on those premises.
- C. It is, therefore, declared to be the purpose and intent of this Article to prohibit the use of dwelling units in the Town of Fenwick Island for disorderly and other disruptive conduct by imposing civil penalties not only upon the occupants and/or users of such premises but also by imposing civil penalties on those persons in possession of any premises in the Town who, after notice of a previous conviction for conduct proscribed by this Article, fail to take appropriate actions to prevent a subsequent violation.

§ 77.9. Unlawful acts by occupants and/or users.

Any person occupying or present on a premises who by himself or in concert with other occupants and/or users causes public inconvenience, annoyance or alarm to any other person or persons or who creates an unreasonable risk thereof by engaging in or causing any of the following conduct shall be violating this article:

- A. Making, creating or permitting any unreasonably loud, disturbing and unnecessary noise or making, creating or permitting any noise of such character, intensity or duration as to be detrimental to the life, health and welfare of any person or which disturbs, injures or endangers the comfort, repose, peace or safety of any individual. By way of example and not in limitation, the following shall be deemed to be unreasonably loud, disturbing and unnecessary noises:

- (1) Playing any radio, phonograph, tape deck or musical instrument in such a manner or at such a volume, particularly between the hours of 12:00 a.m. and 8:00 a.m., as to annoy or disturb the quiet, comfort or repose of any person in any other dwelling unit, apartment or commercial lodging room.

- (2) The blowing of any horn, whistle or signal device, except as a danger signal, for an unreasonable and unnecessary period of time.

- (3) Yelling, shouting or singing at such volume as to be plainly and disturbingly audible to the human ear outside the premises.

§ 77.10. Unlawful acts by persons entitled to lawful possession.

A. Any person(s) entitled to lawful possession who, after notice as herein provided, allows, permits or fails to take affirmative action to prevent repeated violations of this Article shall be deemed to be promoting the use of a dwelling unit for disorderly or other disruptive conduct in violation of this Article.

B. A person(s) in lawful possession shall be presumed to have allowed, permitted or failed to take affirmative action to prevent repeated violations of this Article where a violation of § 77-9 of this Article occurs after such person entitled to lawful possession has, within the past three months, previously been provided actual notice by the Fenwick Island Police Department of a previous conviction for conduct proscribed by § 77-9 of this Article.

C. "Actual notice," as used in Subsection B, shall mean verbal or written notice to one or more of the person(s) entitled to legal possession. If written notice is attempted, it shall be deemed effective by mailing a written notice thereof to the person entitled to lawful possession at his or her last known mailing address by certified mail, return receipt requested, with proper postage affixed. If such notice comes back undelivered (except refused), the Town shall exercise reasonable efforts to provide actual notice by some other means.

D. In the case of a single-family residential property subject to a rental license, oral and written notice of each such violation shall be given to the recorded license holder and his/her realtor within five business days. The license may be revoked if there have been three oral and written notices during a calendar year of violation of §77-9 of this chapter. Such license revocation may be immediate, or deferred to the entire rental season for the following year, or both.

§ 77.11. Violations and Penalties

Any person found guilty of violating any of the provisions of this Article shall, upon conviction thereof, be subject to a fine of \$200. Each day that a person continues to violate the provisions of this Article shall be deemed a separate offense.

ARTICLE IV **Juvenile Curfew**

§ 77.12. Policy.

It shall be unlawful for any person 17 years or less of age (under 18) to be or remain in or upon a public place within the Town of Fenwick Island during the period beginning at 1:00 a.m. and ending at 5:00 a.m.

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§ 77.13. Exceptions.

The following shall constitute valid exceptions to the operation of this Article:

- A. Accompanied by parent. When a juvenile is accompanied by a parent of such juvenile.
- B. Accompanied by authorized adult. When a juvenile is accompanied by an adult authorized by a parent of such juvenile to take said parent's place in accompanying said juvenile for a designated period of time and purpose within a specified area.
- C. Errand directed by parent. When the juvenile is on an errand as directed by his/her parent.
- D. Emergency. When a juvenile is involved in or assisting in an emergency, including, by way of example and not in limitation, responding as a member of a volunteer fire company to a fire company or paramedic call.
- E. First Amendment rights. When a juvenile is exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech and the right of assembly.
- F. Reasonable necessity. In case of reasonable necessity for the juvenile remaining in a public place but only after the juvenile's parent has communicated to the Chief of Police or the person designated by the Chief of Police to receive such notifications the facts establishing the reasonable necessity relating to a specified public place at a designated time for a described purpose, including points of origin and destination. A copy of the communication, or of the police record thereof, duly certified by the Chief of Police to be correct, with an appropriate notation of the time it was received and of the names and addresses of the parent and juvenile shall be admissible evidence.
- G. On own or neighbor's property. When a juvenile is on the sidewalk or property where the juvenile resides or on either side of or across the street from the place where the juvenile resides and the adult owner or resident of that property has given permission for the juvenile to be there.
- H. Attending and returning home within one hour of official activity. When a juvenile is attending or is returning home by a direct route (without any unnecessary stop or detour) from and within one hour of any religious, recreational or other organized activity supervised by adults, sponsored by the Town, a recognized charitable, benevolent or civic association or a similar entity that takes responsibility for the minor.
- I. Employment necessity. When the juvenile is legally employed, going to or returning home from employment.
- J. Interstate or intrastate travel. When the juvenile is, with parental consent, in a motor vehicle, engaged in normal interstate or intrastate travel through the Town or originating or terminating in the Town.
- K. Married. When the juvenile is married or has been married pursuant to state law.

§ 77.14. Town responsibility limited; parental responsibilities.

- A. The foregoing exceptions to the operation of this Article shall act only to create a waiver of enforcement and affirmative defense(s) to such enforcement. By authorizing such exceptions, neither the Town nor any member of the Police Department shall assume any affirmative obligation or duty to supervise the well-being of any juvenile acting pursuant to such authorized exception.
- B. It shall be unlawful for a parent having legal custody of a juvenile knowingly to permit or by inefficient control to allow the juvenile to remain in any Town public place under circumstances not constituting an exception to, or otherwise beyond the scope of, this Article. The term "knowingly" includes knowledge that a parent should reasonably be expected to have concerning the whereabouts of a juvenile in that parent's legal custody. This requirement is intended to hold a neglectful or careless parent up to a reasonable community standard of parental responsibility through an objective test. It shall, therefore, be no defense that a parent was completely indifferent to the activities or conduct or whereabouts of such juvenile.
- C. It shall be unlawful for any parent to "knowingly" (as defined by this Chapter) provide any false authorization, information or certification, written or verbal, to the Town Police Department in order to obtain an exception to the operation of this Article under § 77-12 hereof.

§ 77.15. Enforcement procedures.

- A. If a police officer reasonably believes that a juvenile is in a public place in violation of this Article, the officer shall require the juvenile to provide his or her name, address and telephone number and how to contact his or her parent or guardian. No juvenile shall be issued a citation or taken into custody for a violation of this Article unless the police officer first affords that minor an opportunity to explain his or her conduct. In determining the age of the juvenile and in the absence of convincing evidence such as a birth certificate or driver's license, a police officer shall use his or her best judgment in determining age.
- B. If the police officer reasonably concludes that the juvenile is in violation of this Article, the officer may, depending upon the circumstances (e.g., age of the juvenile, hour of night, juvenile's means of transportation, juvenile's physical condition and whether parents could be reached) take the juvenile into custody pursuant to 10 Del. C. § 1004 or issue the juvenile a citation charging him or her with a violation of this Article and order the juvenile to go promptly home. If the juvenile is issued a citation, the Chief of Police shall send the parent or guardian of the juvenile written notice of the violation as set out in Subsection E hereof.
- C. Notwithstanding § 77-15 B of this Article, when a police officer has reasonable grounds to believe that the juvenile has engaged in delinquent conduct, the procedure shall then be to take the juvenile to the police station, where a parent or guardian shall immediately be notified to come for the juvenile, whereupon the parent or guardian and the juvenile shall be questioned. This is intended to permit ascertainment, under constitutional safeguards, of relevant facts and to centralize responsibility in the person designated there and then on duty for accurate, effective, fair, impartial and uniform enforcement and recording, thus making available experienced personnel and access to information and records.
- D. When a parent or guardian, immediately called, has come to take charge of the juvenile, and the appropriate information has been recorded, the juvenile shall be released to the custody of such parent. If the parent cannot be located or fails to take charge of the juvenile, then the juvenile shall be released to the juvenile authorities, except to the extent that in accordance with police regulations, approved in advance by juvenile authorities, the juvenile may temporarily be entrusted to an adult, neighbor or other person who will on behalf of a parent or guardian assume the responsibility of caring for the juvenile pending the availability or arrival of a parent or guardian.
- E. In the case of a first violation of this Article by a juvenile, the Chief of Police shall cause notice to be given to the parent of such minor. Such notice shall be given by either personal delivery thereof to the parent or by deposit of such notice in the United States mail in an envelope with postage prepaid addressed to such parent at his or her address as shown by records of the Police Department, including information obtained from the appropriate State records and/or any other identifying means. The giving of notice by mail is complete upon the expiration of four days after such deposit of such notice. Proof of the giving of notice by personal delivery or by mail may be made by the certificate of any officer or employee of the Police Department or by affidavit of any person over the age of 18 years naming the person to whom such notice was given and specifying the time, place and manner of the giving of such notice. Such notice shall contain a warning that any subsequent violation of this Article by the minor will result in full enforcement of this Article, including enforcement of parental responsibility and of applicable penalties.

§ 77.16. Violations and penalties.

A. Parents.

- (1) If, after the warning notice given pursuant to § 77-15 of a first violation by a juvenile, a parent violates § 77-12 (in connection with a second violation by the juvenile), this shall be treated as a first offense by the parent. Any parent convicted of violating § 77-13 shall pay a fine of \$200.
- (2) The parent or legal guardian having custody of a juvenile subject to this Article shall be liable for all costs incurred by the Town for providing personnel to remain in the company of a juvenile who has been detained as a curfew violator if the parent or guardian does not pick up the juvenile within one hour after receiving notice from the Town that the Town is detaining

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the juvenile for a curfew violation. The amount to be paid by the parent or guardian shall be based on the hourly wage of the Town employee who is assigned to remain with the juvenile, plus the cost of benefits for that employee.

- (3) The parent or legal guardian having custody of a juvenile subject to this Article shall be liable for any fine or condition of restitution or reparation imposed by a court upon a curfew violator, provided that the curfew violator has not paid the fine or made restitution or reparation within the time ordered by the court, and further provided that the parent or legal guardian has been made a party defendant in all enforcement proceedings against the curfew violator and shall be served with all citations, summons, complaints, notices and other documents required to be served on the curfew violator defendant.

- B. False certification. Any parent convicted of knowingly providing any false authorization, information or certification, written or verbal, to the Town Police Department in violation of § 77-12 shall pay a fine of \$200.

§ 77.17. Enforceability.

The Council intends that this Article be held inapplicable in such cases, if any, where its application would be unconstitutional under the Constitution of the State of Delaware or the Constitution of the United States of America.

Chapter 107, NOISE -

§ 107-1. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

AIRCRAFT -- Vehicles or devices that are used to travel in air above the surface of the earth and include any devices attached, suspended or towed. Also included are remote-controlled aircraft.

MOTORBOAT -- Any vessel that operates on water and is propelled by machinery, including but not limited to powerboats, motorboats and personal watercraft (PWC).

MOTOR VEHICLES -- Vehicles self-propelled or drawn by any mechanical equipment which are capable of emitting noise.

NOISE DISTURBANCE -- Any sound which endangers or injures the safety or health of humans or animals, or annoys or disturbs a reasonable person of normal sensitivities, or jeopardizes the value of property and erodes the integrity of the environment.

PASSES OF MOTOR BOATS OR AIRCRAFT IN PROXIMITY TO FENWICK ISLAND, DE (THE TOWN) -- This term means the driving or piloting of such vehicles through, over or outside of the Town or Town-patrolled beach properties, but close enough so that sounds emanating from such vehicles can be heard by people in the town or on its patrolled beaches. A pass can be from one end of the Town to the other end or a portion thereof.

PERSON -- Includes firms, companies, corporations, partnerships, associations or any organization entity as well as individuals.

TOWN-PATROLLED BEACH -- The sandy beach area east of the eastern boundary of private and public property to the ocean water and the portion of ocean normally used by swimmers. (The areas observed and patrolled by Fenwick beach guards, as provided by the State of Delaware.)

§ 107-2. General prohibitions.

The following acts are deemed to be a noise disturbance:

A. Making, creating or permitting any unreasonably loud, disturbing and unnecessary noise or making, creating or permitting any noise of such character, intensity or duration as to be detrimental to the life, health and welfare of any person or which disturbs, injures or endangers the comfort, repose, peace or safety of any individual. By way of example and not in limitation, the following shall be deemed to be unreasonably loud, disturbing and unnecessary noises:

(1) Playing any radio, phonograph, tape deck or musical instrument in such a manner or at such a volume, particularly between the hours of 12:00 a.m. and 8:00 a.m., as to annoy or disturb the quiet, comfort or repose of any person in any other dwelling unit, apartment or commercial lodging room.

(2) The blowing of any horn, whistle or signal device, except as a danger signal, for an unreasonable and unnecessary period of time.

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(3) Yelling, shouting or singing at such volume as to be plainly and disturbingly audible to the human ear outside the premises.

§ 107-3. Noise suppression devices.

A. No person shall cause, suffer or allow or permit the removal, disconnection or disabling of any noise suppression device or system which has been installed on any noise source pursuant to any of the following:

(1) Pursuant to any federal or state law or regulation.

(2) As a requirement for obtaining a permit to construct, modify or install such noise source.

B. No person shall defeat the designed purpose of any noise suppression system or device by installing any part or component which does not meet the minimum designed specifications for that system or device.

C. This section does not apply to licensed motor vehicles, motorboats or aircraft used exclusively for emergency purposes.

§ 107-4. Noise disturbance levels.

A. Any motorboat or aircraft that makes a pass or passes in proximity to the Town will be in violation of this chapter if any single pass causes a noise disturbance.

B. Music or other sounds made by a radio, tape player, CD player or other such electronic device in or on a motor vehicle is a noise disturbance if heard by a person 25 feet or more from the motor vehicle.

§ 107-5. Fixed external mechanical equipment.

Such equipment will be in violation of this Chapter only when not functioning in accordance with manufacturing specifications and when not in proper working order. Any complaints of the sound emanating from a fixed external mechanical equipment shall be accompanied by documentation supplied by an independent certified source.

§ 107-6. Exceptions.

Exempted from these regulations are:

A. Recreational, sports and musical activities. Noise created by the use of property for the purpose of recreational, sports or musical activities, provided that such exemption is authorized by the Town prior to the activity requested.

B. Emergencies. Noise created as a result of or related to an emergency, including the emission of sound for the purpose of alerting persons to the existence of an emergency and the emission of sound in the performance of emergency work.

C. Public celebrations. Patriotic or public celebrations as authorized by the Town or other government entity empowered to sanction such activity.

D. Productive activities; activities for residential use or for the health, safety and welfare of the community. Unavoidable noises created by activities such as personal home repairs or construction, gardening, grass cutting, power cleaning and aerial pesticide spraying are permitted between the hours of 8:00 a.m. and 8:00 p.m.,

provided that reasonable efforts are made to minimize such noise and the activities do not violate any Town ordinances or State or Federal laws.

E. Special exemptions may be granted by the Town prior to the activity requested.

§ 107-7. Violations and penalties.

A. Any person found guilty of violating any of the provisions of this chapter shall, upon conviction thereof, be subject to a fine of \$200. Each day that a person continues to violate the provisions of this chapter shall be deemed to be a separate offense.

B. In addition to the criminal penalties hereinbefore described, if any person violates any provision of this chapter and/or commits noise disturbance and/or causes or allows noise in prohibited levels to emanate from a source property under his/her ownership or control, the Town may institute an action for injunctive relief against such person to prohibit or prevent such violation.

C. In the case of a single-family residential property subject to a rental license, oral and written notice of each such violation shall be given to the recorded license holder and his/her realtor within five business days. The license may be revoked if there have been three oral and written notices during a calendar year of violation of §77-9 of this chapter. Such license revocation may be immediate, or deferred to the entire rental season for the following year, or both.

D. In addition, The Town Council may institute appropriate proceedings to restrain or enjoin further construction in violation of the chapter and/or proceedings to abate any violation, and to require the removal of the violation. In this event, the Town Council shall be entitled to collect from the offending party or parties, the Town's reasonable attorneys fees, legal costs and expenses and court costs, as a part of any judgment or award in a civil action brought to restrain or enjoin a violation. Civil remedies are in addition to and not in lieu of the penalties provided herein.

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Chapter 95, HAZARDOUS MATERIALS

EXISTING:

§ 95-1. Definitions.

A. For use herein, this chapter adopts the definitions of "hazardous material," "hazardous substance" and "hazardous waste" as used by the United States Department of Transportation as more fully set forth in CFR 171.8. Items included within the definition of "hazardous material," "hazardous substance" and "hazardous waste" are listed in the Hazardous Material Table and CERCLA List as defined by the United States Department of Transportation and found in 49 CFR 172.101.

B. As used herein, "hazardous material" includes hazardous material, hazardous substance and hazardous waste.

§ 95-2. Applicable transportation law.

All federal, state and county regulations concerning the transport of any hazardous material shall be applicable at all times on all streets, roadways, alleys, real estate and waterways in the Town of Fenwick Island.

PROPOSED:

Chapter 95, HAZARDOUS MATERIALS AND STORAGE

§ 95-2. Applicable transportation law.

All federal, state and county regulations concerning the transport *and storage* of any hazardous material shall be applicable at all times on all streets, roadways, alleys, real estate and waterways in the Town of Fenwick Island.

Chapter 102 – Lighting

§ 102-1. Purpose.

The purpose of this chapter regulating lighting is as follows:

- A. Permit reasonable uses of outdoor lighting for nighttime safety, utility, security and enjoyment.
- B. Minimize glare and obtrusive outdoor lighting.
- C. Conserve energy.

§ 102-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

FILTERING -- Covering for a lamp or other light source with a glass or acrylic translucent enclosure of the light source.

FULLY SHIELDED—Outdoor light fixtures shielded or constructed so that no direct light rays are emitted by the installed fixture which go beyond the property lines of the lot(s) on which the light source is located and the bulb cannot be seen from any other property.

INDOOR LIGHT—Illumination initiated, created or generated from the interior of a building or structure which is directed, reflected, filtered or otherwise from the interior to the exterior.

INSTALLED—The attachment, or assembly fixed in place, whether or not connected to a power source, of any outdoor light fixture.

LIGHTING FIXTURE – An assembly of one or more lamps (bulbs), tubes, etc., in a device designed to hold them. The fixture may include a shielding or filtering cover.

OUTDOOR LIGHT FIXTURES -- Illuminating devices, lighting or reflective surfaces, lamps and similar devices, permanently installed or portable, used for illumination or advertisement. Such devices shall include, but are not limited to search, spot and flood lights.

PERSON -- Includes firms, companies, corporations, partnerships, associations, or any organizational entity as well as individuals.

SHIELDING – A device that eliminates direct light rays (from a lamp or other light source) in one or more directions.

§ 102-3. General Provisions.

- A. All outdoor illuminating devices shall be installed in conformance with the provisions of this chapter and the applicable sign regulations.
- B. Lighting, indoor or outdoor, on all properties shall be arranged so as not to reflect or cause glare onto any other property.
- C. For the purpose of this chapter, the following persons shall be presumed to be in custody and control:
 - (1) An individual owner or owners where the premises are owner occupied.
 - (2) The tenant where the premises are leased.

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(3) A manager or person in charge of the premises.

§ 102-4. Approved materials and methods of construction or installation/operation.

The provisions of this chapter are not intended to prevent the use of any design, material or method of installation or operation not specifically prescribed by this chapter, provided that any such alternative has been approved. The Building Official may approve any such proposed alternative, provided that:

- A. It provides at least approximate equivalence to the applicable specific requirements of this chapter.
- B. It is otherwise satisfactory and complies with the intent of this chapter.
- C. Outdoor light(s) are fully shielded and not higher than 30 feet above ground level if attached to a pole or above the bottom of the roofline if attached to a building.
- D. Outdoor lighting under canopies or overhangs are fully shielded and not higher than 30 feet from ground level.
- E. The highest part of any bulb or light fixture is used in determining whether light(s) meet the height limitations of this chapter.
- F. All exterior light(s) or lighting are to be locked in a fixed position.

§ 102-5. Shielding/Filtering required.

- A. All outdoor lighting fixtures shall have shielding as required by this chapter.
- B. Metal halide fixture lamp types shall be filtered.

§ 102-6. Submission of plans; evidence of compliance with regulations.

- A. Submission contents. The applicant for any permit required by any provision of the laws of this town in connection with proposed work involving outdoor light fixtures shall submit (as part of the application for permit) evidence that the proposed work will comply with this chapter. The submission shall contain but shall not necessarily be limited to the following, all or part of which may be part of or in addition to the information required elsewhere in the laws of this town upon application for the required permit:
 - (1) Plans indicating the location of all exterior lighting on the premises and the type of illuminating devices, fixtures, lamps, supports, reflectors and other devices.
 - (2) A description of the illuminating devices, fixtures, lamps, supports, reflectors and other devices, and the description may include, but is not limited to, catalog cuts by manufacturers and drawings (including sections if needed to make the application clear).
 - (3) Photometric data, such as that furnished by manufacturers, or similar material showing the angle of cut off or light emissions.
- B. Additional submission. The plans, descriptions and data required in this section shall be sufficiently complete to enable the Building Official to determine readily whether compliance with the requirements of the Code will be secured. If such plans, descriptions and data cannot enable this determination, by reason of the nature or configuration of the devices, fixtures or lamps proposed, the applicant shall additionally submit evidence of certified reports of tests showing compliance, provided that these tests shall have been performed and certified by a recognized testing laboratory.
- C. Lamp or fixture substitution. Should any outdoor light fixture be changed after the permit has been issued, a change request must be submitted to the Building Official for his or her approval, together with adequate information to assure compliance with the chapter, which must be received prior to substitution.

§ 102-7. Prohibitions.

- A. Certain fixtures and lamps. The installation or use of any mercury vapor, low-pressure sodium, high-pressure sodium, metal halide, fluorescent, quartz or any incandescent lighting fixture or lamp greater than 160 watts which is not fully shielded as provided in the chapter.
- B. Laser source light.
- C. Searchlights.

§ 102-8. Restrictions on use.

The following apply to lamps (bulbs) with or without shielding or filtering and to lighting fixtures:

- A. Spotlights and floodlights shall be arranged so as not to directly illuminate structures on adjacent or other properties.
- B. Illumination by any device or combination of devices (including those cited in Subsection A above) that is/are located within a structure, attached to a house or other structures or located anywhere on a residential or commercial property shall not produce light intensity at any adjacent property boundary in excess of five (5) footcandles as measured by a light meter or similar device.
- C. Special attention shall be given to exposed light bulbs that are unprotected by filtering covers or shielding or not recessed into porch ceilings or roof overhangs. Such exposed light bulbs may cause glare even if all of the other provisions of this article are observed. If this occurs, corrective action, such as shielding or filtering, shall be taken.

§ 102-9. Temporary exemptions; exceptions.

- A. Request; renewal; information required. Any person may submit a written request, on a form prepared by the town, to the Building Official for a temporary exemption from the requirements of the chapter.
- B. Approval; duration. The Building Official shall have five business days from the date of submission of the request for temporary exemption to act, in writing, on the request. If approved, the exemption shall be valid for not more than 30 days from the date of issuance of the approval. The approval shall be renewable at the discretion of the Building Official upon a consideration of all the circumstances. Each such renewed exemption shall be valid for not more than 30 days.
- C. Disapproval; appeal. If the request for temporary exemption is disapproved, the person making the request may appeal to the Town Council pursuant to § 102-12.
- D. Excepted from this chapter is lighting provided by the Town of Fenwick Island, county or state governments and temporary emergency lighting provided by police, firemen, electric utility companies and other such organizations. When needed, the town may allow individual residents to provide temporary emergency lighting.
- E. Exterior holiday lights are exempt.

§ 102-10. Other exemptions.

Outdoor lighting fixtures installed prior to and operable on June 21, 1996 shall comply with the requirements of this chapter no later than July 31, 2016.

§ 102-11. Written notice of violation.

In the event any person shall be found in violation of any section of this chapter, he/she or it shall be given notice in writing, by certified mail, return receipt requested, with copy by the same method to the owner of the property if different from the person given notice. The owner shall correct the violation within 30 days of the mailing of such notice.

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§ 102-12 . Appeals.

Any person aggrieved by any decision of the Building Official made in administration of this chapter has the right to appeal to the Town Council, within 15 days of receipt of notice, by giving written notice of his or her election to do so to the office of the Town Manager and upon payment of a fee as set by resolution of the Town Council from time to time; the Town Manager shall notify the Secretary of the Town Council and shall transmit to the Secretary all the papers constituting the record upon which the decision appealed from was taken. Town Council shall set a date, time and place for the hearing of the appeal, which time and date may be at a regular Town Council meeting or a special meeting of the Town Council, so long as the applicable notice and time requirements may be met. Notice of the appeal and scheduling of the appeal before Town Council shall be sent to the appellant at least 15 days prior to the hearing date. In the event of such an appeal, enforcement is stayed until a decision has been reached by Town Council. Any decision made by Town Council is final.

§ 102-13. Violations and penalties.

Any person found guilty of violating any of the provisions of this chapter shall, upon conviction thereof, be subject to a fine of \$100 as well as costs of prosecution and any court-imposed assessments. Each day that a person continues to violate the provisions of this chapter shall be deemed to be a separate offense.

§ 102-14. Applicability; severability.

- A. The provisions of this chapter are in addition to, and not in derogation of, the provisions of any other applicable laws governing lighting, including but not limited to the provisions of § 135-2H and I.
- B. The provisions of this chapter are severable. If any section, subsection, sentence, clause or phrase of this chapter or its application to any person or circumstance is held invalid by the decision of any court of competent jurisdiction, the remainder of this chapter is and shall remain in full force and effect.